Supreme Court, U.S
FILED

(1)

No. _____ 971931 FEB 5 1998

**********OFFICE OF THE CLERK

In The Supreme Court

Of The

United States

October Term, 1997

Jake Vanner, Sr.
Petitioner

VS.

Dr. "Charlie" Bridges, And
Our Lady of The Lake Medical Center, et al
Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF LOUISIANA

****

PETITION FOR WRIT OF CERTIORARI

****

JAKE VANNER, SR.
Petitioner in Proper Person
6162 Peyton Drive
Baton Rouge, Louisiana 70811
(504) 357-0187

28 pp

QUESTIONS PRESENTED

1. Did the petitioner in this case receive Due Process of Law from the State of Louisiana, considering the fact that he has been denied a hearing on the merits of his argument regarding the failure of the District Court Judge to grant him a continuance in this case?

2. Is there manifest error which contsitutes Due Process of Law in this case, considering the fact that the District Court Judge granted Mover's Motion for Exception of No Cause of Action Based Upon Prescription, when the record shows that petitioner raised a defense to the Motion of Exception of Prescription?

3. Did the Supreme Court of the State of Louisiana err along with the other lower courts' decisions when they tailed to grant petitioner a hearing on his motion for a hearing on the merits regarding his defense in this case?

4. Is there Manifest Error in this case which requires granting a Writ to determine whether there are conflicting state appeals court decision which petitioner alleges exist in this case?

5. In the interest of justice, should this case be REMANDED to the State of Louisiana Courts for further review and consideration, which will form the Due Process of Law Requirements petitioner contends are absent in this case?

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1. The First Circuit Court of Appeals decision conflicts with the decision of the Third Circuit Court of Appeals of Louisiana regarding the process required to be followed by a state court judge at the district level when the court is present with the issue of whether or not time ceased or continued in circumstances which are present in this case.

2. The District Court and the Appellate Court for the First Circuit Court of Appeals have drawn conflicting conclusions regarding the law as it is used in this case.

CONCLUSION	5-6

TABLE OF AUTHORITIES

UNITED STATES CONSTITUTION:

14th Amendment

Cases:

McKeithen vs. LeBlanc, 491 So.2d 807 (La.App.3rd Cir. 1986).

Richardson vs. Moffett, 608 So.2d 275 (La.App. 3rd Cir. 1992).

Maug-U vs. May, 556 So.2d 221, 225 (La.App. 2nd Cir. 1990).

Griffin v. Kinberger, 507 So.2d 821 (La. 1987).

Gordova vs. Hartford Acc. & Indem. Co., 387 So.2d 574 (La. 1980).

Louisiana Articles and Provisions:

R.S. 40:1299(B)(2)

R.S. 95628

Louisiana Acts:

1975, No. 817; Section (A)

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1997

Jake Vanner, Sr.

Petitioner

v.

Dr. "Charlie" Bridges, And
Our Lady of the Lake Hospital, et al

Respondents

Jake Vanner, Sr., respectfully petitions for a Writ of Certiorari to review the judgment of the Supreme Court of the State of Louisiana

OPINIONS BELOW

The opinions of the First Circuit Court of Appeals and the district court in the 19th Judicial District are unreported.

JURISDICTION

The Supreme Court of the State of Louisiana entered its Judgment on September 27, 1997, and its decision on reconsideration on November 7, 1997. The jurisdiction of this court is invoked under 28 U.S.C. and 1254 (1).

LEGISLATION INVOLVED

None. This case concerns judicially announced doctrines and process regarding procedural protection for case process.

LIST OF PARTIES

The two defendants in this case are Doctor Charlie Bridges, the treating physician in this case, and the hospital in which the program for sexual dysfunction was administered, Our Lady of the Lake Hospital.

STATEMENT OF THE CASE

This litigation started out as a medical malpractice claim filed by Jake Vanner, Sr. with the Patient Compensation Fund of Louisiana. Mr. Vanner learned sometime in 1993 that he had been misled by certain professionals, including but not limited to his attorney and other attorneys referred to him by his original attorney. Also, Jake Vanner learned that his treating physician and a psychologist that his claim was not what it appeared to be. Upon learning that he had a medical malpractice claim that Louisiana law protested under circumstances where professionals misled a potential claimant, Jake Vanner proceeded to file his claim with the Patient Compensation Fund in East Baton Rouge Parish, Louisiana. His claim continued to move forward in the administrative arena provided for such process until the respondents in this case, Dr. Charlie Bridges and Our Lady of the Lake Hospital, retained the services of lawyers and proceeded to exception motions in the 19th Judicial District Court system, challenging the right of your

petitioner to move forward in this case based upon prescription. Mr. Jake Vanner objected to these motions and filed in a timely manner pleadings with the 19th Judicial District Court. One of the motions filed by Jake Vanner was a motion to continue the date which was set to hear the case set on motions of exception by the respondents in this case. Jake Vanner was never heard on the merits of his motion for a continuance by the state court judge. Jake Vanner, Sr.'s motion for a continuance was summarily denied and the motions offered by the defending parties to the malpractice action was granted. Mr. Vanner asked the district court to allow him more time to prepare his defense to the motions of exception; however, to no avail with the state district court judge. The court never allowed Jake Vanner additional time to get witnesses needed to make his argument against the hospital and Dr. Charlie Bridges. Mr. Vanner never had a hearing on the merits of his motion for a continuance, nor has he ever had the opportunity to be heard on his defense against the motions exception of Mr. Vanner's malpractice claim on prescription. Mr. Vanner was denied a right to be heard at the district court level. Jake Vanner appealed to the First Circuit Court of Appeal. On the first round of appeal, the Appellate Court remanded for procedural and other violations by the State District Court Judge. After another hearing with the same judge, the State

District Judge again denied the pleadings made by Mr. Vanner. Again, Mr. Vanner applied for writs from the Supreme Court of the State of Louisiana. Mr. Vanner's writ application was denied by the State Supreme Court, and again denied on a rehearing application on November 7, 1997. It is from these denials by the state courts of the State of Louisiana that Mr. Vanner is applying for Writs of Certiorari from the Supreme Court of the United States.

REASONS FOR GRANTING THE PETITION

1. The decision rendered by the First Circuit Court of Appeals for the State of Louisiana conflicts with an earlier decision rendered in the Third Circuit Court of Appeals for the State of Louisiana which talks about the petitioner in a malpractice claim who is challenged in the court of law by way of a motion of exception of prescription, and in which a claimant raises the defense that time did not continue to run due to professional misrepresentation to claimant. Petitioner contends that this case meets that test of which the state courts overlooked or disregarded in the instant case.

Petitioner contends that he has not had his day in court in this case. Petitioner contends that the State of Louisiana did not protect his rights when the district court judge did not grant (at least) a hearing on the merits of his motion in regards to the need for his continuance. The

state court judge ignored all of the potential legal damage that could result by the court's failure to hear petitioner's argument for the continuance and, also, to consider petitioner's need to show the court why the court should hear what he could prove or disprove in his defense of the exception motion made by respondents in this case. The state court just summarily dismissed petitioner's motions. Petitioner argues that his right to be heard is far outweighted by any state interest in judicial economy or interest of any party related to this matter. Louisiana law provides that a mover can defeat a motion of exception of prescription, if said mover can show the court that at some point during the process of the basis for his malpractice claim (time, in fact, legally stopped); however, Louisiana did not give Jake Vanner, Sr. the opportunity to, at least, make a legal showing that under Louisiana law, time stopped for the purposes of his medical malpractice complaint.

Petitioner shows that one of the ways in which Louisiana law allows a medical malpractice claimant to show that time stopped running in a case is by showing that the claimant was misled by PROFESSIONALS. In this case, Jake Vanner, Sr. was going to do just that; however, Louisiana State court judges have not allowed it to happen. Petitioner asks the court for more time to call witnesses needed to make this defense and was summarily denied any such opportunity.

Also, petitioner informed the court that he may in fact acquire the services of an attorney at law if the court would allow him to have more time to prepare his defense to the motions of Dr. Charlie Bridges and Our Lady of the Lake Hospital, but petitioner was summarily denied. Petitioner contends that the failure of the state courts to allow this legal access denied both his substantive and procedureal due process of law.

CONCLUSION

Petitioner argues and contenss that the 14th Amendment to the United States Constitution protects him against arbitrary and abusive disregard for these safeguards to due process of law. Petitioner argues that the State of Louisiana has in fact violated said process. Petitioner shows this Honorable Supreme Court of the United States that in the decision of the Third Circuit Court of Appeals for Louisiana, in the case of McKeithen v. LeBlanc, 491 So.2d 807 (La. 3rd. Cir. 1986), Louisiana Appellate Judges ruled that a state court judge, when confronted with a motion from a complaining party that prescription has stopped in a matter, and when the defending party is attempting to summarily deny the case based on the running of prescription, before the court can grant the exception on prescription, the court must hold a full evidentiary hearing in the case. Petitioner shows this Supreme Court of the United States that his cause is identical to the cause

espoused in McKeithen v. LeBlanc, Supra, and that due process requires that he be afforded the opportunity to be heard on his defense of the action brought to close his case and claim on malpractice by exception on prescription.

Petitioner argues that the First Circuit Court of Appeals completely disregarded this argument by Mr. Vanner and denied the appeal. Petitioner argues that he has been denied due process of law as the law envisions the process and asks that this Supreme Court of the United States seize the opportunity to make a statement to Louisiana on behalf of Jake Vanner, Sr., and grant this writ application and order the appropriate legal remedy to put Mr. Vanner again in a position to be heard on the merits of his defense in the Louisiana court of proper jurisdiction.

Petitioner prays to this Honorable United States Supreme Court for a judgment in his favor and against all inferior courts who ruled in this case.

Petitioner prays for a judgment in accordance witht he law and Constitution of the United States.

Respectfully Submitted,
/s/ Jake Vanner, Sr.
JAKE VANNER, SR., In Proper Person
6162 Peyton Drive
Baton Rouge, Louisiana 70811
Telephone: (504) 357-0187

APPENDICES

APPENDIX A

The Supreme Court of the State of Louisiana

OUR LADY OF THE LAKE HOSPITAL,
DR. CHARLIE BRIDGES, ET AL

VS. NO. 97-C-1567

JAKE VANNER

IN RE: Vanner, Jake; - Defendant(s): Applying for Reconsideration of this Court's Order dated September 26, 1997; Parish of East Baton Rouge, 19th Judicial District Court, Division "F", Number 403,636; to the Court of Appeal First Circuit Number CA 95 0754

November 7, 1997

Reconsideration denied. Judgment is res judicata

HTL
PFC
WFM
CDK
BJJ
JPV
JTK

TRAYLOR, J., - not on panel.

Supreme Court of Louisiana

_____
Deputy Clerk of Court
For the Court

The Supreme Court of the State of Louisiana

OUR LADY OF THE LAKE HOSPITAL,
DR. CHARLIE BRIDGES, ET AL

VS. NO. 97-C-1567

JAKE VANNER

IN RE: Vanner, Jake; - Defendant(s): Applying for Writ of Certiorari and/or Review; Parish of East Baton Rouge, 19th Judicial District Court, Division "F", Number 403,636; to the Court of Appeal First Circuit Number CA 95 0754

September 26, 1997

Denied.

PFC
WFM
HTL
CDK
BJJ
JPV
JTK

TRAYLOR, J. Not on panel.

Supreme Court of Louisiana
September 26, 1997

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Clerk of Court
For the Court

APPENDIX B

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 95 CA 0754

OUR LADY OF THE LAKE HOSPITAL,
DR. CHARLIE BRIDGES, ET AL

VERSUS

JAKE VANNER

Judgment Rendered: December 15, 1995

* * * * * * * * * * *

Appealed from the
Nineteenth Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court Number 403,636

Honorable Frank J. Saia, Judge

* * * * * * * * * * *

Jake Vanner
Baton Rouge, LA

In Proper Person
Appellant

T. MacDougall

Attorney for Appellee
Our Lady of the Lake
Hospital

Ronald A. Seale

Attorney for Appellee
Dr. Charlie Bridges

* * * * * * * * * * *

BEFORE: LeBLANC, WHIPPLE, AND FOGG, JJ.

FOGG, J.

In this medical malpractice case, Jake Vanner appeals from a judgment of the trial court sustaining the peremptory exception raising the objection of prescription filed by Our Lady of the Lake Hospital, Inc. (OLOL) and Dr. Charlie Bridges (hereinafter collectively referred to as "plaintiffs"). For the following reasons, we remand.

The plaintiffs filed suit against Vanner, alleging that Vanner filed a medical malpractice complaint against them with the Louisiana Patient's Compensation Fund. The plaintiffs alleged that they filed suit in order to file a peremptory exception raising the objection of prescription as to Vanner's medical malpractice complaint, as authorized under LSA-R.S. 40:1299.47 (B) (2) (a).[1] Along with their petition, the plaintiffs filed a peremptory exception raising the objection of prescription. According to the exception, Vanner filed his complaint with the Fund on September 3, 1993, and, based on medical records, the alleged act of malpractice occurred on or about February 2, 1989. In their exception, the plaintiffs alleged that under LSA-R.S. 9:5628,

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1. LSA-R.S. 40:1299.47 (B) (2) (a) states,

A health care provider, against whom a claim has been filed under the provisions of this Part, may raise any exception or defenses available pursuant to R.S. 9:5628 in a court of competent jurisdiction and proper venue at any time without need for completion of the review process by the medical review panel.

Vanner had knowledge of sufficient facts of the alleged act of malpractice to begin the running of the one year prescriptive period, such that Vanner's complaint was prescribed. Attached to the exception was a memorandum, and appended to the exception and memorandum were exhibits. The exhibits attached were Vanner's malpractice complaint, his deposition, and medical records as well as a letter to Vanner's attorney from a urologist Vanner consulted.

The trial court set the exception for hearing on April 18, 1994. On April 13, 1994, Vanner filed a motion for continuance. According to the trial court's judgment, the matter came before the court on April 18, 1994, concerning the plaintiffs' exception of prescription and Vanner's motion for continuance. The judgment states that after considering the memoranda which were submitted, the oral argument by the parties, the law and the evidence, the court denied the motion for continuance, sustained the exception of prescription and dismissed the suit as well as the medical malpractice complaint. On appeal, Vanner contends the trial court erred in denying his motion for continuance and in sustaining the exception. We pretermit the first assignment of error, finding that the second assignment of error has merit.

If a plaintiff's claims are not prescribed on the face of the petition, the burden is on the party raising the objection of prescription

to prove the facts to support the objection. **Tranum v. Hebert**, 581 So.2d 1023 (La.App. 1st Cir.), writ denied, 584 So.2d 1169 (La. 1991). However, if on the face of the petition it appears that prescription has run, the burden shifts to the plaintiff to prove a suspension or interruption of the prescriptive period. **Younger v. Marshall Industries, Inc.**, 618 So.2d 866 (La. 1993). At the trial of a peremptory exception, "evidence may be introduced to support or controvert any of the objections pleaded, when the grounds thereof do not appear from the petition." LSA-C.C.P. art. 931. Generally, in the absence of evidence, the objection of prescription must be decided upon the facts alleged in the petition, and all allegations thereof are accepted as true. **State ex rel. Guste v. Thompson**, 532 So.2d 524 (La.App. 1st Cit. 1988). According to the judgment and minute entry for April 18, 1994, evidence was introduced at the hearing on the exception of prescription.[2] However, the record contains no evidence and does not indicate what evidence was introduced at the hearing, as there was no transcript of the hearing.[3] Pursuant to LSA-C.C.P. art. 2164, an

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2. The minute entry for April 18, 1994, states, in pertinent part, "This matter came on for hearing on Exception of Prescription . . . . On the Exception of Prescription documentary evidence was introduced . . . ."

3. While the record contains a document following the memorandum in support of the exception which bears an unsigned file stamp dated April 18, 1994, this document is insufficient to show that the attachments

appellate court must render its judgment upon the record on appeal. The record on appeal is that which is sent by the trial court to the appellate court and includes the pleadings, court minutes, transcript, jury instructions, judgments and other rulings, unless otherwise designated. LSA-C.C.P arts. 2127 and 2128; Official Revision Comment (d) for LSA-C.C.P. art. 2127. An appellate court cannot review evidence that is not in the record on appeal and cannot receive new evidence. **Tranum v. Hebert**, 581 So.2d at 1026. The record before us contains a memorandum in support of the peremptory exception which was supplemented with exhibits. We may not consider exhibits filed in the record which were not filed in evidence unless authorized by law to do so, such as under LSA-C.C.P. arts. 966

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to the memorandum were introduced into evidence at the hearing on the exception. This untitled document states in its caption, "IN ACCORDANCE WITH LOCAL RULE VIII, ADDRESSES AND TELEPHONE NUMBERS OF ALL COUNSEL AND/OR PARTIES TO BE NOTIFIED" and simply bears Vanner's name, address and telephone number, and the name, address and telephone number of counsel for Dr. Bridges and OLOL. Immediately following the document is a document setting forth a certificate of service as to the memorandum in support of the exception dated February 24, 1994. None of the exhibits which follow this document are file-stamped.

Additionally, at the beginning of the record, the clerk's office inserted a page entitled, "CIVIL EVIDENCE LIST" which states, "NO EXHIBITS HAVE BEEN FILED WITH CLERK OF COURT AS OF MARCH 30, 1995. NOTE: THE PCF NO. 93-352 MALPRACTICE COMPLAINT WAS NOT FILED WITH CLERK OF COURT OR THE JUDGE'S OFFICE."

and 967. **Tranum v. Hebert**, 581 So.2d at 1027; **State ex rel. Guste v. Thompson**, 532 So.2d at 527 n.2. We are not authorized to consider as part of the record exhibits attached to a peremptory exception or a memorandum in support of a peremptory exception, and as this memorandum and exhibits were not filed in evidence, they are not part of the record on appeal.

Under LSA-R.S. 40:1299.47 (B) (2) (a), the plaintiffs had the burden of proving that Vanner's claim was prescribed. Because we are not authorized by law to consider the plaintiffs' attachments to their memorandum in support of their exception and because the record before us at this time contains no evidence submitted by the plaintiffs to support their exception, we find that the plaintiffs failed to meet their burden of proof.

However, both the minute entry and the judgment state that evidence was introduced at the hearing on the exception. Ordinarily, the inadequacy of a record is imputable to the appellant. **State ex rel. Guste v. Thompson**, 532 So.2d at 527. However, the inadequacy of an appellate record for which an appellant is responsible cannot operate to the detriment of an appellee. **State ex rel. Guste v. Thompson**, 532 So.2d at 527. Thus, if evidence was introduced at the hearing on the exception and the appellant failed to transmit a complete record to this

court, this inadequacy cannot be used to reverse the judgment in favor of the appellees. **State ex rel. Guste v. Thompson**, 532 So.2d at 527. Conversely, if evidence was not introduced at the hearing on the exception, then it will be necessary to reverse the judgment rendered in favor of the appellees due to their failure to meet their burden of proof that Vanner's claim is prescribed. **State ex rel. Guste v. Thompson**, 532 So.2d at 527.

In the interest of justice, we will remand this case for an evidentiary hearing on the issue of whether the evidence was introduced and for supplementation of the record with the evidence, if properly introduced. LSA-C.C.P. arts. 2132 and 2164. See **State ex rel. Guste v. Thompson**, 532 So.2d at 527-528.

DECREE

For the foregoing reasons, the following orders are entered herein:

(1) this action is remanded to the district court which shall hold an evidentiary hearing to determine whether evidence was introduced at the hearing on the peremptory exception raising the objection of prescription;

(2) if the district court finds as a fact that evidence was properly introduced, the record shall be supplemented with all pertinent evidence

introduced at the hearing and returned to this court, reserving to the appellant the right to assign error on this factual determination;

(3) if the district court finds as a fact that no evidence was introduced, it shall vacate its prior judgment, reserving to the appellees the right to seek a supervisory writ to this court for our review of the factual determination that evidence was not introduced, and, in the absence of such, this appeal will be mooted and Our Lady of the Lake Hospital, Inc. (OLOL) and Dr. Charlie Bridges are cast for costs of this appeal; and

(4) this court shall retain appellate jurisdiction over this case until it is finally decided or this appeal becomes moot.[4]

Since we have retained appellate jurisdiction, we do not at this time assess costs except as set forth above in paragraph (3).

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

RE: Docket Number 95/CA/0754

OUR LADY OF THE LAKE HOSPITAL,
DR. CHARLIE BRIDGES, ET AL

VERSUS

PARISH OF
EAST BATON
ROUGE
JAKE VANNER

On application for Rehearing.

Rehearing DENIED.

/s/ Daniel W. LeBlanc

/s/ Vanessa Guidry-Whipple

/s/ Kenneth J. Fogg

Filed MAR 05, 1996

/s/ Stanley P. Lemoine
Clerk

APPENDIX C

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

JAKE VANNER	NUMBER 403,636
VERSUS	DIVISION "F"
OUR LADY OF THE LAKE HOSPITAL, DR. CHARLIE BRIDGES, ET AL	**JUDGMENT**

This matter came before this Honorable Court on April 18, 1994, for a determination of the defendant's, Jake Vanner, Motion for Continuance, and for a determination of the plaintiffs' Exception of Prescription.

Present were Michelle O. Lorio, for Our Lady of the Lake Hospital, Inc., Ronald A. Seale, for Dr. Charlie Bridges, and Jake Vanner in proper person.

Considering the memoranda submitted by counsel, oral argument presented at the hearing, the law and the evidence, the Judge having concluded the following:

The Motion for Continuance filed on behalf of Jake Vaneer is hereby denied;

The exception of Prescription filed on behalf of Dr. Charlie

Bridges and Our Lady of the Lake Hospital, Inc. Is hereby granted.

That the above entitled and numbered action, and the Medical Malpractice Complaint, entitled Jake Vanner, Sr. v. Our Lady of the Lake Hospital, Inc., et al, PCF No. 93-962, are hereby dismissed, with prejudice, and at plaintiff's cost.

JUDGMENT READ, RENDERED AND SIGNED, in Chambers at Baton Rouge, Louisiana, this 3rd day of May, 1994.

/s/ Frank J. Saia
Judge, 19th Judicial District Court

FILED
May 3, 1994
Dy. Clerk of Court

APPENDIX D

JAKE VANNER

VERSUS

DR. CHARLES BRIDGES AND OUR LADY OF THE LAKE HOSPITAL

CLERK OF THE DISTRICT COURT

19TH JUDICIAL DISTRICT COURT

EAST BATON ROUGE PARISH

STATE OF LOUISIANA

DOCKET NO: 403,636

DIVISION: "F"

MOTION FOR A CONTINUANCE IN HEARING REGARDING DEFENDANTS' MOTION FOR A PEREMPTORY EXCEPTION OF PRESCRIPTION TO THE MEDICAL COMPLAINT:

NOW INTO COURT COMES, JAKE VANNER, IN PROPER PERSON, AND WHO RESPECTFULLY REPRESENTS TO THIS HONORABLE COURT, THE FOLLOWING, TO-WIT:

1.

Mover shows that this Honorable Court has set a hearing date of April 18, 1994, at 9:30 a.m., to hear arguments regarding defendants motion for a peremptory exception of mover's medical malpractice complaint. Mover desires a continuance for the reasons stated herein:

2.

Mover shows that the record will reflect that on its face, mover's malpractice complaint may appear to have prescribed; however, mover is preparing to show this Honorable Court that not

only has mover's medical malpractice complaint not prescribed under the laws of this state, but that prescription did, in fact, cease to run (if it ever properly started). Also, that mover was misled by professionals regarding his condition including Dr. Charles Bridges. Mover is poreparing to show this Honorable Court case law offered by the defendants in this case, when properly considered with the evidence which will be offered by mover, will support mover's case. Mover will argue two theories of law to support evidence in his claim that prescription has not run in his case.

1) The theory and doctrine of contra non valentem agere milla currit praescripto; 2) the theory of law involving the misleading of mover by Dr. Charles Bridges, and others, during this time concerning his condition and the viability of his possible case.

3.

Additionally, mover shows this Honorable Court that, in order to properly prosecute his cause before this Honorable Court and defeat the motion of defendants in this case, he will need the testimony of several witnesses, including, but not limited to, the following people:

1. Dr. Neil Baum (Neurologist)

Dr. Baum will be able to testify to the various levels of discovery of medical affects which the papaverine study by Dr. Charles

Bridges had on my body to produce any given medical condition that I suffer from as a result of the study and the time span that would elapse before it could be determined credibly when a certain problem developed.

2 Dr. Phillip Brantley, Ph.D. (Psychologist)

Dr. Brantley can testify as to my mental state during this period which will support my contention that the doctrine of contra no valentem agere milla currit praescripto applies in this case, and that I could not have possessed the state necessary to deal with the kind of knowledge needed to invoke the running of prescription at the time which defendants argue prescription started in this claim. Dr. Brantley's testimony can also corroborate other testimony that I will argue that the attorneys I consulted led me to think that nothing was really there to pursue, and when you add my mental state to these occurrences, one can see that I was totally misled. Dr. Brantley can testify as to why he questioned the reasons for referring me to him.

3. Mrs. Patricia Vanner (my wife)

My wife will be able to testify about what I was actually going through at the time and she will be able to corroborate other testimony about the impression I got from my treatment and trips to Dr. Charles Bridges after the papapavarine study and how that confused me

concerning my condition.

Mover will also call other witnesses which are not available at this time for the hearing. But given approximately sixty more days to prepare and possibly bring in an attorney, I will be able to be ready to prosecute my case and defend against defendants' arguments concerning the status of prescription of my claim.

Mover prays for judgment from this Honorable Court to, first, continue this hearing. Secondly, mover prays to this Honorable Court to set a new hearing date, desirably, no less than sixty days from the date this Honorable Court acts upon this motion.

Mover prays for judgment from this Honorable Court, and for judgment commensurate with justice and fairness in this case in that mover sees no compelling interest on the part of defendants to have this matter adjudicated without mover having first a full due process of law hearing which would necessarily involve the proper preparation by mover.

Mover prays for judgment in accordance with law.

By: /s/ Jake Vanner, Sr.
6162 Peyton Drive
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Telephone: (504) 357-0187

APPENDIX E

AFFIDAVIT

I certify and affirm that the allegations contained in this document are true and correct to the best of my knowledge and belief, and that I affirm these allegations under penalty of perjury.

/s/ Jake Vanner, Sr.

SIGNED AND SWORN TO BEFORE ME, a Notary Public, on this the 13th day of April, 1994, in Baton Rouge, Louisiana.

/s/ Mark W. Fry

Notary Public

My Commission Expires at Death